S.B. CIVIL MISC. APPEAL NO.1204/2006.
Pukha Ram alias Pukhraj & Anr.
Vs.
Sharvan Ram & Ors.

Date of Order :: 3rd September 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Ms. Deepika Vyas, for the appellants.
Mr. Mahendra Prajapat, Guardian-ad-litem.

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This appeal under Section 173 of the Motor Vehicles Act has been submitted by the owner and driver of the vehicle involved in the accident against the common award dated 17.08.2005 insofar it relates to Claim Case No.126/2005 whereby the Tribunal has awarded compensation in the sum of Rs.3,22,000/- to the husband and four children of the vehicular accident victim Keli Devi, said to be about 35 years in age.

While making the award, the Tribunal has considered two claim cases arising out of same accident being Claim Case Nos.125/2005 and 126/2005 together; and while holding the driver responsible for the accident resulting in death of two occupants of the vehicle, has proceeded to exonerate the insurer of its liability with the finding that the victims cannot be described as 'third party' and they being occupants of the vehicle, the insurer does not stand in liability in view of its insurance policy.

The appellants have attempted to raise two questions in this appeal: first that the Tribunal has erred in exonerating the insurer of its liability; and second that the award in the present case on its quantification of compensation remains highly excessive.

So far the contention relating to the liability of insurer is concerned, on 06.10.2006 this Court observed that the Tribunal has decided the question about exoneration of insurer of its liability in relation to two similarly placed victims of the vehicular accident, both of whom were occupants of the vehicle in question; but the appellants have not filed any appeal in relation to Claim Case No.125/2005 allegedly for the reason that the matter has been compromised between the appellants and the claimants of said Claim Case No.125/2005. This Court observed that for whatever reason, the fact remains that the appellants have not filed any appeal in relation to Claim Case No.125/2005 and the finding therein as regards the insurer has become final.

In the aforesaid circumstances, this Court rejected the contention against the exoneration of the insurer in this appeal with the observations,-

> "Once the finding of exoneration of the insurer for the victims of the accident being not covered under the insurance policy issued, has become final in relation to one set of claimants, this Court is of opinion that

> the appellants cannot now ask for a contradictory finding in relation to other Claim Case No.126/2005 in relation to similarly placed victim who too was occupant of the jeep in question. In this view of the matter, so far the contention against the insurer is concerned, the same cannot be accepted and deserves to be rejected. As a necessary consequence, the appeal against the insurer respondent No.6 stands dismissed."

However, this Court was of opinion that the quantum of compensation awarded in this case requires consideration and hence notices were issued for final disposal to the claimants.

Nobody has appeared for the claimants; and noticing that the claimants Nos. 2 to 5 were shown to be minors, this Court appointed learned counsel Mr. Mahendra Prajapat Guardian-ad-litem. It was given out on behalf of the appellants on 11.07.2007 that certain negotiations were going on for compromise and hence the matter was adjourned. Again, during the course of submissions on 25.07.2007, a feeble suggestion was made, of some propositions of settlement between the parties; however, having regard to the circumstances of the case, it appears appropriate to decide the matter on merits.

On the merits of the case, learned counsel Ms. Deepika Vyas appearing for the appellants has contended that the deceased was a house wife and the Tribunal has been in error in taking her income at Rs.2,000/- per month, i.e., Rs. 24,000/-

per annum and in taking the multiplicand at Rs.16,000/- per annum after deducting one-third; that the Tribunal has further been in error in assessing pecuniary loss with application of excessive multiplier of 17; and yet further, in allowing excessive amount towards general damages. Learned counsel Mr. Mahendra Prajapat, on the other hand, has duly supported the award in question and submitted that with excessive dependency of the minor children of the victim, the amount awarded by the Tribunal in the sum of Rs.3,22,000/- does not call for interference.

Having given a thoughtful consideration to the rival submissions and having scanned through the entire record, this Court is of opinion that the award in question stands in excess of just and reasonable amount of compensation admissible in this case; and deserves modification by downward revision.

The suggestion as made by the claimants of the victim earning about Rs.5,000/- per month in agriculture work remains wholly baseless for no any corroborative evidence having been produced on record. The husband of the victim has alleged himself earning Rs.5,000/- per month; and suggested that he was required to employ a maid at Rs.2,000/- per month to look after the household; and a witness PW-3 Smt. Shanti Devi has been examined in that

relation. The said witness PW-3 Shanti Devi has stated the deceased Keli Devi to be her neighbour and having sisterly relations with her. She has also pointed out that a son and a daughter of the victim have already been married. In the overall circumstances of the case, suggestion of the said witness PW-3 looking after household of the claimant Sharvan Ram and being paid Rs.2,000/- per month appears to be an artificial story. However, from her statements receding dependency of the claimants comes to surface with one son and one daughter of the deceased being married.

In the overall circumstances of the case, this Court is of opinion that for assessment of just compensation admissible in this case, the notional income of the deceased could have been taken at Rs.15,000/- per annum and loss of dependency after deducting one-third, at Rs.10,000/- per annum. The deceased has not been shown below 35 years of age; and in view of the family set up and overall circumstances, multiplier of not more than 16 could be applied in this case. Therefore, pecuniary loss reasonably admissible in this case comes to Rs.1,60,000/- (10,000/- x 16) in place of the amount of Rs.2,72,000/- as assessed by the Tribunal.

Though the Tribunal has further allowed a bit excessive amount towards funeral expenses at Rs.10,000/- and towards loss of consortium to the claimant No.1 at Rs.15,000/-,

however, having regard to the overall circumstances and the reduction being made in the assessment of pecuniary loss, it does not appear appropriate to make any reduction on the other amount allowed by the Tribunal. Thus, with reduction of the amount of Rs.1,12,000/- (Rs. 2,72,000/- *minus* Rs. 1,60,000/-), the award of compensation deserves to be made in the sum of Rs.2,10,000/- in place of the amount of Rs.3,22,000/- as allowed by the Tribunal.

As a result of the aforesaid, this appeal succeeds and is partly allowed to the extent indicated above; the principal amount of award at Rs.3,22,000/- is modified to Rs.2,10,000/-, while retaining other propositions of interest @ 7.5% per annum from the date of filing of the claim application after adjustment of the amount received under No Fault Liability and affirming the liability of the appellants.

It shall be required of the appellants to deposit the amount payable under the modified award within 30 days from today with the tribunal that shall make appropriate orders for apportionment and disbursement. The parties are left to bear their own costs of this appeal.

(DINESH MAHESHWARI), J.

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